

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HUMAN GENOME SCIENCES, INC.,

Plaintiff,

V.

GENENTECH, INC.,

Defendant.

C.A. NO. 08-166-SLR

DEFENDANT, GENENTECH, INC.'S, MOTION TO DISMISS

Defendant, Genentech, Inc. ("Genentech"), hereby moves this Court for an Order dismissing Plaintiff's complaint in its entirety under Fed. R. Civ. P. 12(b)(6) or 12(b)(1), or both.

In the alternative, Genentech moves this Court for an Order dismissing the claims and prayer by Plaintiff, Human Genome Sciences, Inc. (“HGS”) that Genentech’s involved patent claims are unpatentable for obviousness under 35 U.S.C. § 103. Complaint, ¶¶ 14(e), 15-16, 20-21 & 23; Prayer ¶ (q).

Also in the alternative, Genentech also moves this Court an Order dismissing under Fed. R. Civ. P. 12(b)(1), or in the alternative striking under Fed. R. Civ. P. Rule 12(f), HGS' claims and prayer regarding its request for "sanctions" against Genentech. Complaint ¶¶ 14(i) & 20; Prayer ¶¶ (m), (n).

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

WEIL, GOTSHAL & MANGES LLP*
Matthew D. Powers
Vernon M. Winters
201 Redwood Shores Parkway
Redwood Shores, CA 94065
(650) 802 3000

WEIL, GOTSHAL & MANGES LLP
Elizabeth Stotland Weiswasser
Peter Sandel
Rebecca Fett
767 Fifth Avenue
New York, NY 10153
(212) 310 8000

Dated: May 28, 2008
866754

By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
E-mail: provner@potteranderson.com

Attorneys for Defendant
Genentech Inc.

* *Pro hac vice* motions for Weil, Gotshal & Manges LLP lawyers are pending.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on May 28, 2008, the within document was filed with the Clerk of the Court using CM/ECF; that the document was served on the following party as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY HAND DELIVERY AND E-MAIL

Steven J. Balick, Esq.
John G. Day, Esq.
Ashby & Geddes LLP
500 Delaware Avenue, 8th Floor
Wilmington, DE 19899
Sbalick@ashby-geddes.com
jday@ashby-geddes.com

I hereby certify that on May 28, 2008 I have sent by E-mail the foregoing document to the following non-registered participants:

Richard L. DeLucia, Esq.
John R. Kenny, Esq.
Kenyon & Kenyon
One Broadway
New York, NY 10004
rdelucia@kenyon.com
jkenny@kenyon.com

/s/ Philip A. Rovner
Philip A. Rovner (#3215)
Potter Anderson & Corroon LLP
Hercules Plaza
P. O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HUMAN GENOME SCIENCES, INC.,

Plaintiff,

V.

GENENTECH, INC.,

Defendant.

C.A. NO. 08-166-SLR

[PROPOSED] ORDER

Defendant, Genentech, Inc., brought a motion to dismiss plaintiff's complaint and, in the alternative, to dismiss plaintiffs' complaint and prayer that (1) Genentech's involved patent application claims are unpatentable under 35 U.S.C. § 103 and (2) Genentech be sanctioned. Having considered the parties' papers, argument, and evidence, this Court grants the motion and orders as follows.

1. The Court dismisses the complaint in this matter with prejudice under Rule 12(b)(1) and, alternatively, Rule 12(b)(6), in light of plaintiff's failure to exhaust the administrative process in the PTO.

2. Alternatively, the Court dismisses the claims and prayer by plaintiff that Genentech's involved patent claims are unpatentable for obviousness under 35 U.S.C. § 103. Complaint ¶¶ 14(e), 15-16, 20-21 & 23; Prayer ¶ (q) are dismissed to the extent that the purport to plead a claim under, or seek relief regarding, §103.

3. Also in the alternative, this Court hereby dismisses under Fed. R. Civ. P. 12(b)(1), and strikes under Fed. R. Civ. P. Rule 12(f), HGS' claims and prayer regarding its

request for “sanctions” against Genentech as set forth in Complaint ¶¶ 14(i) & 20; Prayer ¶¶ (m), (n).

IT IS SO ORDERED this _____ day of _____, 2008.

United States District Judge